

REMARKS

Applicant respectfully declines to add the optional traditional section headings.

The art rejections are respectfully traversed.

Claim 1 recites a dual mode channel and an output data stream. The output data stream includes real-time data. A controller also allocates a non-real-time packet data to the output data stream when the data rate of the real-time data is less than the full data capacity of the dual mode channel.

The Examiner believes he has found this in Slegger, particularly in column 5, line 64 through column 6, line 26. Applicant respectfully disagrees. The text in the first paragraph of column 6 may be confusing, because it discusses transmitting voice and non-voice data at the same time; however, a closer look at column 5, lines 52 and 64, reveals that there are two radio channels set up. Furthermore column 6, lines 3-4 states that the voice communication is only on one of the two channels. Lines 21-26 of column 6 teach away from the concept of putting voice and data in the same output stream by insisting that when there is only one channel the data transfer must be interrupted when a voice communication is needed. Accordingly, there is no teaching or suggestion of adding data to a real-time output stream in this portion of Slegger. Slegger's voice and data are always in separate output streams

New claim10 distinguishes even more clearly over the reference, by reciting that the output data stream resides in a single channel and includes real-time data and non-real-time packet data.

Claims 7 and 11 are analogous to claims 1 and 10, respectively, in their relevant limitations.

The Examiner points to a buffer at 45. The rejection is not very clear on this point, but it would appear that the Examiner is rejecting claims 4 and 9 over this buffer. The Examiner has not pointed to any text explaining how this buffer works. Applicant accordingly respectfully submits that the rejection of claims 4 and 9 fails to satisfy 37 CFR 104. Certainly Applicant cannot find any teaching or suggestion that the buffer stores non-real-time packet data for transmission during reductions in the data rate of the real-time data as recited in claims 4 and 9. Applicant only finds element 45 described as a buffer at column 5, line 5. There is no indication of any other functions for it. Any reading of this buffer as anticipating claim 4 or 9 can only be made with impermissible hindsight in light of Applicant's disclosure.

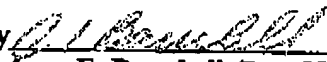
Claims 3 and 8 recite that the first station comprises a speech coding system and that the controller receives timing information from the speech coding system indicating the timing of interruptions in the speech data streams. Against claims 3 and 8 the Examiner points to Duault, column 7, line 14-45. This reference discusses detecting whether an audiotape channel is idle or silent. The Examiner has not indicated where the reference teaches or suggests that this detection would be as a result of timing information received from a speech coding system. The Examiner then goes on to say that it would be obvious to add a voice detector to a speech codec – but he fails to indicate where either of the references suggests such a thing. This type of reasoning has been recently prohibited in the case of *In re Lee*, 277 F. 3d 1338 (Fed. Cir. 2002), which prohibits such conclusory statements and requires the Examiner to find teachings or suggestions in the references. In any case, the Examiner's finding of a functional advantage like "efficiency" militates in favor of a finding of non-obviousness rather than a finding of obviousness. Accordingly, Applicant respectfully submits that the Examiner has failed to present a prima facie case of obviousness with respect to claims 3 and 8.

Any other rejections would appear to be moot in view of the above.

Applicant respectfully submits that he has answered each issue raised by the Examiner and that the application is accordingly in condition for allowance. Allowance is therefore respectfully requested.

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Respectfully submitted,

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